

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
LEVEL 3 COMMUNICATIONS LLC)	
)	WC Docket No. 03-266
Petition for Forbearance Under)	
47 U.S.C. § 160(c) from Enforcement)	
Of 47 U.S.C. § 251(g), Rule 51.701(b)(1),)	
And Rule 69.5(b))	

**COMMENTS OF SUPRA TELECOM TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC OPPOSING LEVEL 3'S**

**PETITION FOR FORBEARANCE UNDER 47 U.S.C. § 160(c)
FROM ENFORCEMENT OF
47 U.S.C. § 251(g), RULE 51.701(b)(1), AND RULE 69.5(b)**

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**COMMENTS OF SUPRA TELECOMMUNICATIONS AND INFORMATION
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OPPOSING

**LEVEL 3’S PETITION FOR FORBEARANCE UNDER 47 U.S.C. § 160(c)
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Supra Telecommunications and Information Systems, Inc. (“Supra Telecom”) a competitive local exchange carrier (“CLEC”) providing competitive local telecommunications services in Florida pursuant to Section 214 of the Communications Act of 1934 and state certificates of public convenience and necessity, hereby requests that the Commission deny Level 3’s petition to forbear from the enforcement of certain and express and implied provisions of Section 251(g) of the Communications Act of 1934, as amended (“Act” or “Communications Act”), Rule 51.701(b)(1), and where applicable, Rule 69.5(b) which result in the imposition of interstate and/or intrastate switched access charges to Internet Protocol (“IP”)-to-Public Switched Telephone Network (“PSTN”) and PSTN-to-IP voice communications (collectively “IP-PSTN services” or “IP-PSTN communications” or Voice-over-Internet “VoIP traffic”).

Supra Telecom respectfully requests that the Commission deny Level 3's petition for forbearance in order to prevent the regulatory uncertainty, unfair competitive advantages, and harm that would befall local competition and universal service should Level 3's petition be granted. Rather, Supra Telecom recommends that the Commission address the issue of VoIP traffic and switched access charges in the context of the FCC's intercarrier compensation docket currently before the FCC where the commission can consider all of the ramifications of Level 3's request upon local competition and universal service as well as ensuring a level competitive playing field. If the FCC grants Level 3's petition in isolation from full consideration of all the issues to be discussed in the FCC's intercarrier compensation docket and subsequently restrains LECs (ILECs and CLECs¹) from collecting switched access charges from carriers such as Level 3 simply because they use VoIP technology rather than the typical circuit switched PSTN technology to carry long distance traffic, LECs will suffer irreparable financial harm and will find it difficult to continue providing local telecommunications service thus threatening the FCC's goal of providing universal service and promoting local competition.

Supra Telecom agrees with Level 3 that the Commission "must distinguish those rules that, in a competitively neutral and technologically appropriate manner, support important social goals such as public safety, law enforcement, access for persons with disabilities and universal service from legacy regulations that are unnecessary to restrain

¹ While Level 3's petition mentions only the impact to ILECs, it should be noted that granting Level 3's petition would also negatively affect CLECs and could seriously impair a CLEC's ability to continue providing competitive local telecommunications service. CLECs are equally concerned with the enormous negative revenue impact that would occur if Level 3's petition were to be granted.

market power.”² This is why Supra Telecom recommends that the Commission deny Level 3’s petition and consider the issue of the application of switched access charges to long distance voice traffic carried by VoIP providers in the Commission’s pending Inter-carrier Compensation NPRM.³ Since the Commission is already working to develop a unified inter-carrier compensation regime to replace the myriad of compensation regimes that “treats different types of carriers and different types of service disparately, even though there may be no significant differences in the costs among carriers or services,”⁴ it makes sense to review the Level 3 petition in the context of this NPRM rather than in isolation. If the FCC were to consider Level 3’s petition in isolation and grant the petition, it would add further uncertainty and imbalance to the existing inter-carrier compensation regimes and risk seriously damaging universal service.

The Level 3 Petition Must Be Considered In The Context Of All The Issues That It Will Impact.

Over the past two decades, the FCC has carefully constructed a switched access compensation system that has continued the goal of preserving universal service. As new issues surrounding switched access charges have arisen due to the development of new technology changing market conditions, the FCC has sought to debate and resolve these issues with the overriding goal of preserving universal service. The FCC has a long tradition of thoughtfully and carefully considering the impact that changes to switched

² See Level 3 Communication’s *Petition For Forbearance Under 47 U.S.C. § 160(C) From Enforcement Of 47 U.S.C. § 251(G), Rule 51.701(B)(1), And Rule 69.5(B)*, hereinafter referred to as (“Level 3’s Petition”), page iii.

³ See Notice of Proposed Rulemaking, *Developing a Unified Inter-carrier Compensation Regime*, 16 FCC Rcd. 9610, 9613 (rel. Apr. 27, 2001).

⁴ *Id.*, para. 5.

access rules would have upon the goal of supporting universal service. If Level 3's petition is granted at this time without full consideration of the impact to universal service and a mechanism to ensure the continuance of universal service, then the continuing provisioning of local telecommunications and universal service will be seriously threatened. As stated above, the Commission has already initiated a NPRM to develop a unified intercarrier compensation regime. Level 3's petition should be considered in the context of the Commission's existing NPRM to ensure that a truly unified intercarrier compensation regime is developed which furthers the Commission's goals of public safety, law enforcement, access for persons with disabilities and universal service.

IP-PSTN Traffic Will Not Be De Minimis If The Petition Is Granted And Will Cause A Mass Exodus From The Switched Access Market.

Level 3 claims that IP-PSTN traffic is de minimis so that even if there is harm from granting its petition, the harm will be relatively minor. Level 3 states, "It is unlikely that IP-PSTN traffic will grow so quickly as to present any danger to universal service before the Commission adopts and complete a transition to a unified intercarrier compensation regime." Supra Telecom strongly disagrees with Level 3's unsupported and unfounded speculation. Level 3's petition to allow VoIP carriers to bypass switched access charges and pay only reciprocal compensation for long distance voice calls will open a flood gate as virtually every interexchange carrier will seek to move their traffic from Feature Group D trunks to a VoIP network configuration that will virtually eliminate switched access traffic as we know it. The fact that Level 3 has requested that

the “forbearance would extend to all carriers handing Voice-embedded IP communications that originate or terminate on the PSTN,”⁵ effectively ensures that all switched access traffic will be converted to VoIP traffic.

Long distance competition is intense and interexchange carriers are relentless in their efforts to reduce their switched access costs. If the FCC creates a loophole for interexchange carriers to reclassify their switched access traffic and have it rated at the lower reciprocal compensation rate, then every interexchange carrier will be routing their long distance traffic via VoIP and converting their traffic as quickly as possible. The net result will be that all LECs will suffer an enormous reduction in switched access revenues. This dramatic reduction in revenues will seriously impair the LECs’ collective ability to provide universal service.

Level 3’s Petition Will Seriously Harm Universal Service

Throughout its petition, Level 3 acknowledges that switched access revenues contain subsidies to support universal service and that substituting IP-PSTN traffic for circuit-switched traffic will cause a drop in the revenues LECs receive because VoIP carriers would be allowed to pay reciprocal compensation rates which are lower than switched access rates. However, Level 3 seeks to downplay the severe impact that its petition will have on universal service by claiming that the impact of its forbearance petition to universal service will be minimal. Level 3 states that:

“Voice-embedded IP communications are unlikely to grow to such a significant extent over the next three to five years that substitution of IP-

⁵ See Level 3’s Petition, page iv.

PSTN traffic for wholly-circuit switched traffic will fundamentally upset ILEC finances and certainly not to an extent that the delivery of universal service will be endangered.”⁶

As discussed above, Supra Telecom strongly disagrees that the growth of IP-PSTN traffic will be minimal. Rather, there is every reason to believe that if Level 3’s petition is granted, that there will be a massive migration of traffic as interexchange carriers rush to substitute IP-PSTN traffic for circuit-switched traffic in order to reduce their switched access costs. Clearly, a massive migration from circuit-switched traffic to IP-PSTN traffic will cause an enormous revenue loss for all LECs and will threaten the continued provisioning of universal service.

Level 3 also opines that even if the impact to universal service is more than minimal, LECs can easily address the revenue shortfalls “outside of this docket because states have authority to do so,”⁷ or by simply increasing interstate subscriber line charges “in the appropriate forum,” or by a number of other improbable suggestions. Level 3’s suggested remedies for the LECs to seemingly effortlessly and immediately increase their revenues to recoup their switched access losses border on the flippant to the ridiculous. While Supra Telecom agrees that certain remedies are theoretically possible, the legal and regulatory proceedings required to obtain such relief will take years to complete. Additionally, the requested relief is not guaranteed and may not be sufficient.

⁶ Id., p. 37.

⁷ Id., p. 15.

As Supra Telecom has stated repeatedly in these comments, the proper forum to address Level 3's petition request and to institute the appropriate and needed measures to ensure the continued provisioning of universal service is the Commission's Intercarrier Compensation NPRM. The Commission is in the best position to address reducing switched access revenues and rate rebalancing to ensure the preservation of universal service more quickly than any state proceeding which has yet to even be established. If the Level 3 petition is addressed in the Intercarrier Compensation NPRM, Level 3, and other VoIP providers, will experience minimal discomfort relative to the enormous negative impact to universal service that U.S. telecommunications users will experience if Level 3's petition is granted.

Denying The Level 3 Petition Will Provide Legal And Regulatory Certainty.

Level 3 alleges that the current legal uncertainty over the application of switched access charges to VoIP long distance traffic will be resolved only if Level 3's petition is granted. To the contrary, legal uncertainty will only be resolved if Level 3's petition is denied. This is because denial of Level 3's petition will ensure that the switched access charge regime is maintained which will also allow universal service and local telecommunications competition to be maintained. If Level 3's petition is granted, ILECs and CLECs will seek to appeal the order in an effort to address the need to replace the switched access revenues that were used to support universal but have disappeared because the Commission carved out an exception for VoIP providers that they don't have to pay switched access for voice long distance traffic because it travels over a VoIP network.

Level 3's "Transitory" Argument Is Without Merit.

Level 3 argues that all VOIP traffic is under 251(b)(5) (reciprocal compensation) rules and that it doesn't make sense to "shift that traffic into the access charge regimes, and then reconvert all access traffic to a unified regime that more closely resembles Section 251(b)(5). First, Level 3 wrongly assumes that long distance traffic is exempt from access charges simply because it originates or terminates to a VOIP-based telecommunications provider. The FCC has consistently applied access charges based on the starting point and the end point of the call. The FCC has never exempted voice-to-voice LD traffic from switched access charges due to the underlying technology that call travels over. In fact, the current status quo under the FCC's rules is that switched access charges should be applied to all voice-to-voice long distance calls regardless of the underlying technology that call travels over.

Level 3 seeks to downplay the impact of exempting VoIP LD traffic from switched access charges by implying that it will be short term and by hypothesizing that "To the extent there is some difference between the traffic subject to this proceeding and circuit-switched traffic, that difference is transitional only, as the Commission can (and ultimately will) fully address any such difference as it adopts a unified intercarrier compensation regime." Level 3 knows neither the outcome nor the issue date of the FCC's intercarrier compensation order. Additionally, Level 3 does not know if the order will be appealed and remanded back to the FCC. Basically, we don't know when we will

have a final nonappeable order on the highly contentious issue of switched access charges. It may be several years before the issue is fully resolved.

Level 3's List Of Issues To Be Resolved Can Be Easily Resolved.

Level 3 states on page nine that in order for the FCC to conclude that access charges should apply to IP-PSTN and/or incidental PSTN-PSTN traffic, the FCC and the applicable state commissions would have to resolve myriad issues. The FCC then puts forth a list of five issues that they allege must be resolved if the FCC denies their petition and postulates that resolution of these issues poses an insurmountable barrier that forces the FCC to simply grant Level 3's petition. However, these issues pose no such barrier and can be easily resolved by the FCC in denying Level 3's petition. Level 3's issues lists is as follows:

- 1) whether the particular Voice-embedded IP communications was a "telecommunications service" or an "information service"
- 2) If an "information service", whether it was interconnected with the PSTN through the ESP exemption or pursuant to carrier arrangements.
- 3) If intrastate access charges are to apply, whether the service is intrastate in nature:
- 4) Whether it is permissible to apply access charges pursuant to existing FCC rules, and the FCC's findings in the 1998 Report to Congress;

5) whether it is in the public interest to apply access charges in the context.

Supra Telecom will address each of the issues raised by Level 3.

Level 3's claim that the FCC will have to determine whether the particular Voice-embedded IP communications was a "telecommunications service" or an "information service" is without merit. The FCC has already decided this issue in previous Commission decisions (Computer I, II, and III) in which the FCC carved out an exemption for switched access charges for enhanced service providers and clearly stated that switched access charges still apply to voice to voice calls regardless of the transformations that occur to the voice signal as it is carried over the network. As long as the call starts with voice and ends with voice, switched access charges apply. If it is a voice to voice call, then it is a telecommunications service. The ESP exemption only applies if it is not a voice-to-voice call. That is, some type of conversion has to occur such as converting voice to e-mail or vice versa in order for the ESP exemption to apply. Thus, the FCC has already decided this issue.

Level 3's next issue for the FCC to resolve is the same as the first issue. Level 3 states that if the call is an "information service", then the FCC has to determine whether it was interconnected with the PSTN through the ESP exemption or pursuant to carrier arrangements. As stated above, The FCC has already ruled that these types of calls are

not information services eligible for the ESP exemption; therefore, this issue can be disregarded.

Level 3's third issue to resolve is that the FCC must determine whether intrastate access charges apply or whether the service is intrastate in nature. Again, this is similar to the first issue. Since it is clear that a voice-to-voice call is subject to access charges, then it is logical to apply access charges the same as they would apply for any other type of long distance voice call. The jurisdiction of the call is determined based upon the origination point and termination point of the call and the appropriate access charges (interstate or intrastate) will apply. Hence, interstate switched access charges should apply to interstate calls and intrastate switched access charges should apply to intrastate calls.

Level 3's fourth issue is whether it is permissible to apply access charges pursuant to existing FCC rules, and the FCC's findings in the 1998 Report to Congress. In the Federal Telecommunications Act of 1996, Congress specifically created section 251(g) to preserve the application of switched access charges. Accordingly, the FCC has a strong history of upholding the application of switched access charges in several proceedings. Although the FCC has investigated ways to remove subsidies from switched access charges since the passage of the Act, the FCC has consistently supported and enforced the application of switched access charges in a myriad of proceedings regarding interexchange traffic including the ISP Reciprocal Compensation proceeding. While the FCC has acknowledged that voice calls placed over IP-PSTN networks have been viewed

as exempt from access charges, the FCC has never definitively ruled that switched access charges do not apply to “phone-to-phone” IP communications and has even stated that it might conclude in the future that access charges should apply this traffic.⁸ Level 3’s petition illustrates that the time has come for the FCC to definitely address this issue and the correct forum to address this issue is the FCC’s current Intercarrier Compensation NPRM.

Level 3’s final issue is whether it is in the public interest to apply access charges in the context. As discussed above, it is clearly in the public interest to continue to apply access charges because of the harm to universal service and to competitive local telecommunications service that would occur if Level 3’s petition were granted. To not apply access charges to long distance voice calls simply because they are carried using Voice over Internet technology rather than circuit switched technology would disrupt the revenue flows needed for the support of universal service.

Denying Level 3’s Petition Will Not Harm Technological Innovation Or The Deployment Of Advanced Services.

Level 3 alleges that telecommunications companies will have less incentive and/or ability to develop and sell new and innovative services if their petition is denied. Level 3 claims that “Forbearance will allow VOIP applications to continue to blossom and flourish, increase investment, spur product and technological innovation, and drive deployment and demand for advanced services.”⁹ This argument is without merit.

⁸ See *1998 Report to Congress*, 13 FCC Rcd. at 11544-45 (para. 91)

⁹ See Level 3’s Petition, page iv.

Competitive pressure is the main force that drives companies to develop and sell new and innovative services. Whether a company has high profit margins or not, it is competitive pressure that forces a company to seek ways to differentiate itself from its competitors by providing superior customer service; products at a lower cost or for a better value; or new and innovative services. While it may be true that VoIP companies have historically had more funds to devote to the development of new services because they have been able to forgo paying switched access charges on their long distance voice traffic up until now, it does not provide a justifiable reason for them to be exempt from ever paying switched access charges.

Billing Factors Can Be Used If Call Origination Or Termination Points Cannot Be Determined.

Supra Telecom agrees that technology does not currently exist to determine where a VoIP call originates or where it terminates. However, the industry has other types of voice telecommunications traffic for which it cannot discern the origination point and has developed traffic billing factors which estimate the amount of traffic originating from certain jurisdictions. The use of billing factors is very common for billing. Therefore, Level 3's argument that VoIP traffic should all be billed as 251(b)(5) reciprocal compensation traffic simply because carriers cannot discern the jurisdiction of the origination or termination point is without merit.

For example, for long distance calling, LECs cannot tell whether traffic they terminate from a Feature Group D trunk originated from an interstate jurisdiction or from

an intrastate jurisdiction. Accordingly, interexchange carriers must file Percent Interstate Usage (“PIU”) factors with the LEC so that the LEC may render an appropriate switched access bill. Likewise, when a CLEC interconnects with an ILEC, the CLEC must file a Percent Local Usage (“PLU”) factor with the ILEC so that the ILEC knows what percentage of the traffic to bill as local traffic subject to reciprocal compensation charges and what percentage to bill as long distance traffic subject to switched access charges. Additionally, when a CLEC interconnects with a Cellular Mobile Radio Service (“CMRS” or “Cellular”) carrier via a third party’s access tandem, the interconnecting carriers cannot measure the amount of local traffic that terminates to the cellular carrier or originates from the local cellular carrier. To handle billing of this traffic, the interconnecting parties agree to a termination factor and use that factor for billing.

Summary

Supra Telecom respectfully requests that the Commission deny Level 3’s petition for forbearance in order to prevent the regulatory uncertainty, unfair competitive advantages, and harm that would befall local competition and universal service should Level 3’s petition be granted. The potential discontinuance of charging switched access rates for voice long distance traffic that travels over a VoIP network; and the potential impacts of such a policy decision, warrant careful and thoughtful consideration. The Commission has already established a docket, the Intercarrier Compensation NPRM, to address issues such as the ones raised by Level 3’s forbearance petition.

If the FCC grants Level 3's petition in isolation from full consideration of all the issues to be discussed in the FCC's intercarrier compensation docket and subsequently restrains LECs (ILECs and CLECs¹⁰) from collecting switched access charges from carriers such as Level 3 simply because they use VoIP technology rather than the typical circuit switched PSTN technology to carry long distance traffic, LECs will suffer irreparable financial harm and will find it difficult to continue providing local telecommunications service thus threatening the FCC's goal of providing universal service and promoting local competition. If the FCC were to consider Level 3's petition in isolation and grant the petition, they will add further uncertainty and imbalance to the existing intercarrier compensation regimes and risk seriously damaging universal service. It makes sense to review the Level 3 petition in the context of the Intercarrier Compensation NPRM rather than in isolation.

Respectfully submitted,

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¹⁰ While Level 3's petition mentions only the impact to ILEC, it should be noted that granting Level 3's petition would also negatively affect CLECs and could seriously impair a CLEC's ability to continue providing competitive local telecommunications service. CLECs are equally concerned with the negative revenue impact that would occur if Level 3's petition were to be granted.